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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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11 ALBERTO LIZARRAGA,) Case No.: 1:23-cv-00888-JLT-SKO (HC)
12)
13) Petitioner,) ORDER DISMISSING FIRST AMENDED
14) v.) PETITION WITH LEAVE TO FILE SECOND
15)) AMENDED PETITION
16) [THIRTY-DAY DEADLINE]
17) LEANNE LUNDY,)
18) Respondent.)
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18 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
19 pursuant to 28 U.S.C. § 2254. Petitioner filed a federal habeas petition in this Court on May 30, 2023.
20 (Doc. 1.) The Court conducted a preliminary screening of the petition and determined that Petitioner
21 failed to name a proper respondent, failed to present any cognizable grounds for relief, and failed to
22 exhaust state remedies. (Doc. 6.) Petitioner was granted leave to file a First Amended Petition to cure
23 these deficiencies. On June 29, 2023, Petitioner filed a First Amended Petition. (Doc. 9.) Review of
24 the petition reveals that Petitioner again fails to present cognizable grounds for relief. Therefore, the
25 Court will dismiss the First Amended Petition with leave to file a Second Amended Petition.

26 **I. PROCEDURAL HISTORY**

27 In October of 2015, Petitioner was convicted in the Kern County Superior Court of attempted
28 murder with great bodily injury and assault with a deadly weapon. See People v. Lizarraga, Case No.

1 F072572 (Cal. Ct. App. 2018).¹ Petitioner states he appealed to the California Court of Appeal and
2 sought review in the California Supreme Court.

3 **II. DISCUSSION**

4 **A. Preliminary Review of Petition**

5 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary
6 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it
7 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
8 the district court” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory
9 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,
10 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
11 answer to the petition has been filed.

12 **B. Failure to State a Cognizable Federal Claim**

13 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

14 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain
15 an application for a writ of habeas corpus in behalf of a person in custody pursuant to a
16 judgment of a State court *only on the ground that he is in custody in violation of the
Constitution or laws or treaties of the United States.*

17 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States
18 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a
19 person in custody upon the legality of that custody” Preiser v. Rodriguez, 411 U.S. 475, 484
20 (1973).

21 To succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that the
22 adjudication of his claim in state court

23 (1) resulted in a decision that was contrary to, or involved an unreasonable application
24 of, clearly established Federal law, as determined by the Supreme Court of the United
25 States; or (2) resulted in a decision that was based on an unreasonable determination of
26 the facts in light of the evidence presented in the State court proceeding.

27 ¹ The Court takes judicial notice of the state court dockets pertaining to Petitioner’s conviction. See United
28 States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) (stating that a court may take judicial notice of its own
records in other cases, as well as other courts’ records).

1 28 U.S.C. § 2254(d)(1),(2).

2 In addition to the above, Rule 2(c) of the Rules Governing Section 2254 Cases requires that the
3 petition:

- 4 (1) Specify all the grounds for relief available to the petitioner;
- 5 (2) State the facts supporting each ground;
- 6 (3) State the relief requested;
- 7 (4) Be printed, typewritten, or legibly handwritten; and
- 8 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.

9 The instant petition is deficient. Petitioner specifies four grounds for relief: 1) Insufficient
10 assistance of counsel; 2) Illegal constitutional evidence gained in search and seizure; 3) Prosecution
11 obtained by a biased officer; and 4) Prosecutorial misconduct. Although Petitioner has specified his
12 grounds for relief, the claims are entirely conclusory. He claims his counsel provided insufficient
13 assistance, but he fails to set forth any reasons in support of his claim. He does not state how counsel
14 was ineffective, or how he was prejudiced from counsel's actions or inactions. He claims certain
15 evidence was illegally gained through search and seizure. He does not state what evidence was illegal,
16 why it was illegal, how it was illegally obtained, and how he was prejudiced. He claims an officer was
17 biased in his case, but he fails to show how this had any impact on his trial. Finally, he claims the
18 prosecutor committed misconduct, but he again fails to demonstrate how the misconduct was
19 committed. The claim does not make sense. Petitioner alleges that "the pergatory [sic] evidence
20 prescribed by Officer Long in Los Angeles County Hospital was never confirmed in court by
21 uncomplying sud [sic] non prosecuting victim 'Armando Carrera' who never once vocally nor
22 verbally stated any name as to belief of suspect but morbidly answered 'yes' and 'no' to absconding
23 [sic] and pergatising [sic] officer Huizar or Joseph Long in illegal search and seizure intercepted
24 evidence material sustained by District Attorney of California 'Benjamin K. Titel in misconduct jury
25 trial.'" (Doc. 9 at 5.)

26 Second, Petitioner fails to state how the state court's resolution of his claims, whatever they
27 may be, resulted in a decision that was contrary to, or involved an unreasonable application of, clearly
28 established Federal law, as determined by the Supreme Court of the United States; or resulted in a
decision that was based on an unreasonable determination of the facts in light of the evidence

1 presented in the State court proceeding. Petitioner asks “if the court would consider reviewing [his]
2 entire conviction” for error, but it is not a federal habeas court’s role to review a petitioner’s trial and
3 determine what claims can be raised. The burden to properly set forth claims for relief is
4 unquestionably on Petitioner. Petitioner will be provided a final opportunity to properly set forth his
5 claims. Petitioner is advised that he must comply with the rules specified above. Failure to do so will
6 result in a recommendation that the action be dismissed.

7 **III. ORDER**

8 Accordingly, IT IS HEREBY ORDERED:

- 9 1) The petition for writ of habeas corpus is DISMISSED with leave to amend;
10 2) The Clerk of Court is DIRECTED to provide Petitioner with blank § 2254 habeas forms;
11 3) Petitioner is DIRECTED to file a Second Amended Petition within thirty (30) days of the
12 date of service of this Order. Failure to do so will result in a recommendation that the
13 action be dismissed.

14
15 IT IS SO ORDERED.

16 Dated: **June 30, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE